

Before the
LIBRARY OF CONGRESS
COPYRIGHT OFFICE
Washington, D.C. 20540

GENERAL COUNSEL
OF COPYRIGHT

JAN 3 1997

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In re: Determination of Statutory)
License Terms and Rates for Certain) No. 96-5
Digital Subscription Transmissions) CARP DSTRA
of Sound Recordings)

**DMX INC.'S OPPOSITION TO RIAA'S MOTION
TO COMPEL SERVICES TO IDENTIFY TO WHICH
REQUEST EACH PRODUCED DOCUMENT IS RESPONSIVE**

DMX Inc. ("DMX"), by undersigned counsel, opposes the Recording Industry Association of America's ("RIAA's") Motion to Compel Services to Identify to Which Request Each Produced Document is Responsive.

First, there is no legal or factual basis for RIAA's motion. RIAA is unable to point to any basis in the Copyright Office Rules or decisions that require parties to index the documents produced in the manner RIAA seeks. The Copyright Office has required only that "all documents offered in response to discovery requests must be furnished in as organized and usable form as possible." Copyright Office Order, November 27, 1996, at 7. RIAA's Motion contains no complaint that DMX did not produce its documents in an organized and usable form, no protest that RIAA cannot ascertain the responsiveness of any particular document(s) produced by DMX, nor any other concrete showing that RIAA is prejudiced by DMX's responses to discovery.

Second, RIAA's Motion is moot with respect to DMX. Although DMX does not agree that it is required to comply with RIAA's request, in an effort to accommodate RIAA and to avoid burdening the Copyright Office with unnecessary motion practice, DMX

already affirmatively identified the discovery requests to which the documents it produced are responsive. See Letter from Joni Lupovitz to Steven M. Marks (Dec. 18, 1996) (annexed as Attachment P to RIAA's Motion). Any misunderstanding in this connection is a result of the broad scope of DMX's document production.

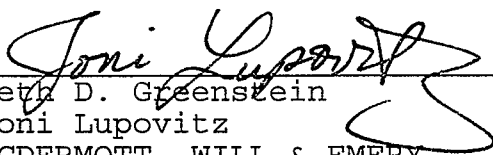
DMX initially produced documents with a liberal reading of RIAA's discovery requests, as it would have if the discovery requests had been lodged in a typical court litigation. Indeed, DMX produced over two thousand pages of documents to RIAA during discovery in this matter. Not only did DMX produce the documents upon which it relied at the time it prepared its Direct Case, DMX went beyond its discovery obligations in this CARP proceeding by producing some documents which are relevant to and supportive of DMX's Direct Case, but upon which its witnesses did not specifically rely in preparing their testimony. Indeed, in the December 18, 1996 letter to RIAA's counsel, DMX's counsel explicitly noted "that some of the published articles that DMX Inc. produced are generally supportive of the testimony in whole or part, and do not necessarily underlie particular assertions therein."

Finally, the statement in the December 18, 1996, cover letter to RIAA's counsel that "we have attempted to identify the documents that are most directly responsive to each of RIAA's requests [and] to the extent that other documents [such as the "Articles"] produced touch on an issue, they may be deemed responsive as well" was made in good faith, and should in no way

be interpreted as an "admission" that DMX has not complied fully with RIAA's request that DMX identify the document requests in response to which documents actually relied upon were produced. DMX's December 18, 1996 index and related explanation should well satisfy RIAA's request.

For the foregoing reasons, RIAA's Motion should be DENIED with respect to DMX Inc.

Respectfully submitted,


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Dated: January 8, 1997

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 8, 1997, a true copy of the foregoing DMX Inc.'s Opposition to RIAA's Motion to Compel Services to Identify to Which Request Each Produced Document is Responsive was served by hand, except as noted below, upon the following:

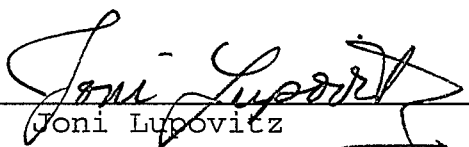
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